

EX PARTE OR LATE FILED

COUDERT BROTHERS

ATTORNEYS AT LAW

1627 I STREET, N.W.
WASHINGTON, D.C. 20006
TEL: 202 775-5100 FAX: 202 775-1168

NEW YORK	JAKARTA
PARIS	HO CHI MINH CITY
WASHINGTON	HANOI
LONDON	BERLIN
BRUSSELS	DENVER
HONG KONG	ST. PETERSBURG
SINGAPORE	MONTREAL
SAN FRANCISCO	ALMATY
BEIJING	PALO ALTO
SYDNEY	MEXICO CITY
LOS ANGELES	ASSOCIATED OFFICE
SAN JOSE	RIOS FERRER Y
TOKYO	GUILLÉN-LLARENA, S.C.
MOSCOW	BUDAPEST
BANGKOK	ASSOCIATED OFFICE
	NAGY ÉS TRÓCSÁNYI
	ÜGYVÉDI IRODA

December 21, 1998

RECEIVED

DEC 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Further Ensure that Scanning Receivers Do Not Receive Cellular Radio Signals, ET Docket No. 98-76, RM 9022

Dear Ms. Salas:

On December 17, 1998, Tom Frangione, Chief Executive Officer of Wireless Marketing Services, Inc., met to discuss the above-referenced proceeding with the following:

Rodney Conway, Office of Engineering and Technology
Karen Rackley, Office of Engineering and Technology

At the meeting, the participants discussed a number of issues concerning the proposed rules in the above-referenced docket regarding the regulation of scanning receivers. The topics of discussion are indicated in the enclosed material used for presentation purposes.

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter and its attachment are being filed with your office.

No. of Copies rec'd
List ABCDE

0+1

December 21, 1998
Page 2

COUDERT BROTHERS

If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tara K. Giunta".

Tara K. Giunta
Wendy C. Chow
Counsel for
Wireless Marketing Services, Inc.

cc: Karen Rackley
Rodney Conway

RECEIVED

DEC 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PRESENTATION OF WIRELESS MARKETING SERVICES, INC.
TO THE FEDERAL COMMUNICATIONS COMMISSION
December 17, 1998**

Re: *Amendment of Parts 2 and 15 of the Commission's Rules to Further Ensure that Scanning Receivers Do Not Receive Cellular Radio Signals — ET Docket No. 98-76, RM-9022*

I. Background on Wireless Marketing Services, Inc.

- Wireless Marketing Services, Inc. ("WMS") is developing a proprietary, data gathering methodology that utilizes fixed and mobile devices to gather and store competitive marketing, utilization, and network quality information about the wireless industry.
 - WMS' system will consist of data collection devices that gather data from the control channels of wireless telephone networks and pass usage information back to a central database.
 - Devices will be manufactured to monitor only the forward control channel of cellular and personal communications service ("PCS") transmissions. The WMS technology will not access the voice communications of consumers.
 - WMS plans to use the data collected to offer carriers competitive marketing information, utilization, and network quality benchmarking tools. Data will be gathered only on an aggregate basis and will not be capable of identifying individual wireless users.
- The wireless telephony market is experiencing a dramatic increase in competition and a rapid growth of subscribers to wireless service, making the need for accurate, timely market data critical.
 - Currently, there are over 65 million wireless phone subscribers, and over 2,300 wireless systems operate in the United States.
 - As the competition among wireless competitors increases, so does the need for timely, accurate marketing information that will help carriers better understand their own market positions.
 - The WMS service will provide to carriers much-needed data estimating competitive market shares and identifying market-level trends. With this information, carriers will develop services and offerings to better match the needs of market segments, improving efficiency and service. All

information will be provided to carriers on an aggregate basis without identifying individual wireless customers.

II. WMS Opposes Expansion of the Definition of Scanning Receiver

- The definition of “scanning receiver” should not be expanded such that it prohibits the manufacture and use of products and components that do not implicate the issue addressed by the FCC’s rules — eavesdropping on wireless communications.
- WMS agrees with the comments of KSI, Inc., that the Commission should exempt from its definition of ‘scanning receiver’ equipment “that can tune the cellular frequency band but is not intended for sale to the general public and does not extract the voice transmission in order to produce an audio output that enables the eavesdropping on wireless communications.”
 - Similar to the E-911 location technology described by KSI, the WMS technology will not “listen” to the voice communication of a wireless caller or produce an audio output that enables eavesdropping on wireless communications.

The WMS receiver gathers data only from non-voice/content portions of wireless transmissions, *i.e.*, the forward control channel of a wireless call. It does not access the voice communication channel.

Although CDMA technology does not use separate voice and control channels, it does use a unique code for call set-up information that is distinct from the code used for the voice communication. The WMS technology will only be capable of accessing the call set-up information.

- The FCC has historically recognized the need for exempting equipment that is used for legitimate purposes. For example, the FCC has exempted test equipment from its prohibition on scanning receivers. Section 15.121(b) of the FCC’s rules also exempts scanners that are manufactured exclusively for use by communications service providers.
- Although WMS believes that the WMS service would fall under the current exemption for scanners manufactured solely for use by carriers, the limited scope of this exemption may hinder the development of additional applications and products.
 - In addition to providing marketing data and analyses to wireless carriers, WMS plans to broaden its service offering and customer base to provide network quality benchmarking tools and competitive marketing

information to non-carrier entities, such as handset and other equipment providers and industry associations. A comprehensive exemption for equipment that does not extract voice transmissions and is not available to the general public would allow for the expansion of services such as those provided by WMS.

- CTIA’s proposal to modify the Section 15.121(b) exemption to clarify that scanning receivers may be used only by “officers, employees, and agents of wireless service providers” as “a necessary incident to the rendition of his service or to the protection of the rights or property of the provider,” is unnecessarily narrow and may preclude the development of legitimate services that do not implicate the eavesdropping concerns addressed by the FCC’s scanner rules.